



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201139012

JUL 07 2011

Uniform Issue List: 408.03-00

Legend:

Taxpayer A	=
Financial Institution B	=
Company C	=
IRA X	=
Amount 1	=

Dear:

This letter is in response to a request for a letter ruling dated June 23, 2010, as supplemented by correspondence from your authorized representative dated March 24, 2011, in which you have asked for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to the failure of his financial advisor to inform him that the purchase of shares of Company C stock with funds distributed from a qualified individual retirement arrangement ("IRA") were required to be held in trust by an authorized IRA trustee and that the trustee was the entity required to purchase the shares.

Taxpayer A represents that he is the owner of IRA X, a qualified IRA established and maintained at Financial Institution B under the rules of section 408 of the Code. Taxpayer A represents that he discussed investing IRA X assets in shares of Company C stock with his financial advisor in 2008. Company C stock, however, was not traded on a stock exchange. Taxpayer A alleges that because the IRA X trustee was not authorized to make such an investment, Taxpayer A requested advice from his financial advisor on using funds distributed from IRA X to purchase Company C stock as an IRA investment. Taxpayer A alleges that the financial advisor informed him that such an

investment was permitted but that the advisor failed to inform Taxpayer A that the shares of Company C stock were required to be purchased and held by an IRA trustee authorized to make such an investment. The financial advisor, who is also Taxpayer A's authorized representative, has acknowledged his failure to inform Taxpayer A that the Company C stock must be purchased and held in trust by the IRA trustee.

Taxpayer A further alleges that, relying on the advice of his financial advisor, he received a distribution of Amount 1 from IRA X and within 60 days of receiving the distribution, he used Amount 1 to purchase shares of Company C stock. Taxpayer A alleges that the stock certificate was registered in the name of IRA X and that he believed the shares of Company C stock were validly invested in IRA X.

Taxpayer A did not become aware that the stock was not properly held by the IRA X trustee until 2009, when he attempted to convert IRA X into a Roth IRA. As soon as he learned about the error, Taxpayer A arranged to seek a waiver of the 60-day requirement.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at

any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by the failure of his financial advisor to properly advise him that the shares of Company C stock were required to be purchased and held in trust by an IRA trustee authorized to make such investment. The information Taxpayer A has presented is consistent with that assertion.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount 1 to an IRA (or IRAs) described in section 408(a) of the Code. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code. This ruling does not authorize the rollover of amounts that are required to be distributed by Code section 401(a)(9).

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact xxxxxxxxxxxx (Government Identification Number xxxxxxxxx) by phone at (xxx) xxx-xxxx or by fax at (xxx) xxx-xxxx. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted copy of ruling letter
- ▶ Notice of Intention to Disclose

cc: